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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,696	03/09/2007	Stephan Christopher Pleines	70279USPCT	7419

22847 7590 01/29/2010  
SYNGENTA BIOTECHNOLOGY, INC.  
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EXAMINER
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FOX, DAVID T

ART UNIT	PAPER NUMBER
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1638

NOTIFICATION DATE	DELIVERY MODE
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01/29/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IP.SBI@syngenta.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,696	<b>Applicant(s)</b> PLEINES ET AL.	
	<b>Examiner</b> David T. Fox	<b>Art Unit</b> 1638	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ONE(1) MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

***Restriction/Election***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

**Group I, claim(s) 1-11, 30 and 33-39**, drawn to a Brassica plant comprising a DNA fragment which comprises a radish-derived restorer gene, said fragment being truncated to avoid linkage to a high glucosinolate locus, said truncation due to a break between the fertility restorer locus and the glucosinolate locus.

**Group II, claim(s) 12-19, 22-29, 31 and 40**, drawn to a method for identifying a Brassica plant comprising a DNA fragment comprising a radish-derived restorer gene but not a high glucosinolate gene, said method comprising detecting molecular markers which are amplified by primers.

**Group III, claim(s) 20-21**, drawn to isolated molecular markers which may have partial homology to particular markers.

**Group IV, claim(s) 32**, drawn to a kit comprising isolated primers.

**The inventions listed as Groups I-IV do not relate to a single general inventive concept** under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The inventions are linked by the technical feature of a Brassica plant comprising a DNA fragment comprising a shortened radish segment which comprises a restorer locus but not a high glucosinolate locus, said plant being identifiable via molecular

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markers specific for each locus, wherein said markers may exhibit partial homology to particularly recited markers. However, this feature is not special because it was taught by PIONEER HI-BRED (WO 98/56948, Applicant submitted on 12 December 2006, see pages 21-24 for example).

Moreover, the inventions are not linked because they each involve physiologically and biochemically divergent starting materials and method steps.

Group I, a first product, requires a particular deposited Brassica line comprising a particular recombination event, not required by Group II.

Group II, a first method, requires methods of molecular marker analysis, not required by the deposited Brassica line of Group I.

Groups I-II involve whole Brassica plants, methods for determining male sterility, and methods of plant breeding; each not required by Groups III or IV.

Group III, a second product, requires isolated molecular markers of at least 500 nucleotides in length, and combinations thereof, which are physiologically and biochemically distinct from the living whole plants of Group I or the oligomers of Group IV.

Group IV, a third product, requires isolated primers of 20-26 nucleotides in length, and combinations thereof, which are physiologically and biochemically distinct from the living whole plants of Group I or the whole molecular markers of Group III.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined** even though the requirement

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may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are linked by a single special technical feature, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (571) 272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David T Fox/

Primary Examiner, Art Unit 1638

January 22, 2010